

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MARY GENOSKY, *Personal representative
of the estate of Michael D. Genosky, Decedent,*

Plaintiff,

v.

ORDER

Civ. No. 11-2230 (MJD/LIB)

METROPOLITAN LIFE INSURANCE
COMPANY, and AON CORPORATION,

Defendants.

John J. Neal, Willenbring, Dahl, Wocken & Zimmermann, PLLC, Counsel for Plaintiff.

David W. Asp and Susan E. Ellingstad, Lockridge Grindal Nauen PLLP, and Mary T. Weber, Sidley Austin LLP, Counsel for Defendant Aon Corporation.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Leo I. Brisbois dated April 27, 2012 [Docket No. 50], which recommended the dismissal of claims against Defendant Aon Corporation. Plaintiff has filed an objection to the Report and Recommendation. [Docket No. 51.] Plaintiff objects only to the recommendation

that Plaintiff's claim under 29 U.S.C. § 1132(a)(3)(B) be dismissed. Pursuant to statute, the Court has conducted a de novo review upon the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based that review, the Court **ADOPTS** the thorough Report and Recommendation of United States Magistrate Judge Leo I. Brisbois dated April 27, 2012.

The Court agrees with the Magistrate Judge that the question of § 1132(a)(3)(B)'s applicability is controlled by the holding in Pichoff v. QHG of Springdale, Inc., 556 F.3d 728, 732 (8th Cir. 2009) (holding that compensatory relief is unavailable under 29 U.S.C. § 1132(a)(3)(B)). The Supreme Court's decision in CIGNA Corp. v. Amara, 131 S. Ct. 1866, 1879 (2011), which stated that monetary relief may be available under § 1132(a)(3)(B) when such relief is associated with equitable estoppel, reformation, or surcharge, does not override the holding in Pichoff or otherwise apply here. Here, as in Pichoff, Plaintiff "seeks compensation for the benefits that would have been paid . . . had the policy not lapsed," and "[s]uch relief . . . is compensatory in nature and unavailable under § 1132(a)(3)(B)." Pichoff, 556 F.3d at 732; see also Mertens v. Hewitt Assocs., 508 U.S. 248, 255 (1993) ("Money damages are, of course, the classic form of *legal* relief.").

The Court further agrees that Plaintiff's claim for equitable relief cannot succeed because it amounts to a repackaged denial of benefits claim. "[W]here a plaintiff simply characterizes a denial of benefits as a breach of fiduciary duty, equitable relief is not appropriate, because the plaintiff would be able to obtain adequate relief under § 1132(a)(1)(B)." Kendall v. Int'l Ass'n of Bridge, Structural, and Ornamental Iron Workers, Civ. No. 10-3140 (MJD/JHG), 2011 WL 1363996, at *8 (D. Minn. April 11, 2011). See Varsity Corp. v. Howe, 516 U.S. 489, 514-15 (1996).

Accordingly, based upon the files, records, and proceedings herein, **IT IS
HEREBY ORDERED:**

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Leo I. Brisbois dated April 27, 2012. [Docket No. 50.]
2. Defendant Aon Corporation's Motion to Dismiss [Docket No. 10] is **GRANTED** and Plaintiff's claims against Defendant Aon Corporation are **DISMISSED** without prejudice.

Dated: July 24, 2012

s/ Michael J. Davis

Michael J. Davis
Chief Judge
United States District Court